

1 **MINUTES OF THE COTTONWOOD HEIGHTS CITY**
2 **APPEALS HEARING OFFICER MEETING**

3
4 **Wednesday, April 11, 2018**

5 **5:00 p.m.**

6 **Room 124, Council Conference Room,**
7 **2277 East Bengal Boulevard, Cottonwood Heights, Utah**
8

9 **ATTENDANCE**

10
11 **Present:** Paxton Guymon, Appeals Hearing Officer
12 Shane Topham, City Recorder
13 Michael Johnson, Senior Planner
14 Paula Melgar, City Recorder
15

16 **BUSINESS MEETING**

17
18 **1.0 WELCOME/ACKNOWLEDGMENTS**

19
20 Appeals Hearing Officer, Paxton Guymon, called the meeting to order and welcomed those in
21 attendance.
22

23 **2.0 PUBLIC COMMENT**

24
25 **2.1 (Project #AHO-18-002) Public Comment on a Request from Tom Beggs for the**
26 **Expansion of a Non-Complying Structure at 2741 East Nantucket Drive.**
27

28 Officer Guymon reported that the above request is to convert a flat roof to a pitched roof. Senior
29 City Planner, Michael Johnson, reported that the property is located in the R-1-8 zone with a
30 minimum eight-foot side yard setback and a minimum combined setback of 20 feet. The existing
31 home encroaches into the side yard by a few feet. The home was built in 1974 before the City was
32 incorporated and is currently a legal non-conforming structure. The proposal is to increase the
33 height of the home by converting the roof from a flat to a pitched roof. Because the measurement
34 is taken to the roof peak, the height will increase across the length of the home including the portion
35 that is non-conforming. The proposed height is 19½ feet. The applicants were not proposing to
36 expand any further into the side setback. The Code allows the approval of extensions by the
37 Appeals Hearing Officer under the conditions that it is in keeping with the intent of the zoning
38 ordinance and will not impose an unreasonable burden. Staff recommended approval of the
39 request based on the findings set forth in the staff report.
40

41 Officer Guymon indicated that he had read the staff report and reviewed the application. The
42 expansion seemed fairly significant but does not increase the footprint of the building.
43

44 Ben Diamond, from Diamond Design, reported that he prepared the plans for the applicant, Tom
45 Beggs, and the proposed change increases the height of the roof by approximately four feet. He
46 remarked that the change is long overdue. The side yard setbacks will remain unchanged and the

1 footprint will not increase. The applicant submitted a Building Permit and the Building Code
2 requirements were met for the trusses and weight bearing loads.

3
4 Officer Guymon opened the meeting to public comment. There were no public comments. The
5 public comment period was closed.

6 7 **3.0 ACTION ITEMS**

8 9 **3.1 (Project #AHO-18-002) Action on a Request from Tom Beggs for the Expansion of a** 10 **Non-Complying Structure at 2471 East Nantucket Drive.**

11
12 *Officer Guymon APPROVED the request from Tom Beggs for the expansion of a non-*
13 *complying structure at 2471 East Nantucket Drive subject to the following conditions:*

- 14
15 *1. A building permit shall be obtained to ensure safe building standards.*
16
17 *2. The structure must comply with applicable Building Code requirements.*

18
19 *A written “Appeals Hearing Officer Decision” explaining the analysis and decision was signed*
20 *and dated by Officer Guymon, with a duplicate original given to the Applicant.*

21 22 **4.0 APPEAL HEARING**

23 24 **4.1 (Project #BOA-17-009) Hearing on an Appeal by James Adinaro of the Planning** 25 **Commission’s Approval of CUP-17-008, Conditional Use Approval of a Public** 26 **Facilities Electronic Display Sign at 1820 East 7200 South.**

27
28 Mr. Johnson reported that the staff presentation serves as a review of the written staff response and
29 is not as detailed as the first appeal. The second basis of appeal was more complicated and will
30 be reviewed in greater detail. It was written since the Commission failed to make a proper
31 determination for approval of a conditional use under 19-84-080 by ignoring key evidence required
32 under that Code. Mr. Johnson referred to the Code, which states that when approving a conditional
33 use, the Planning Commission *may* impose conditions or deny a conditional use. If that is done,
34 the recommendations must be based on written findings of fact with regard to each of the standards
35 set forth. The Code further states that the Planning Commission shall not approve issuance of a
36 Conditional Use Permit (CUP) unless the evidence presented establishes the findings set forth,
37 which include the 16 standards and findings. Those that did not seem to apply were shaded out.

38
39 Mr. Johnson highlighted the last standard, which states that the foregoing approval standards shall
40 be subject to any contrary requirements of Utah State Code 10-9-85-07. This gives cities strict
41 guidance on how to process Conditional Use Permits. The section specifies that a conditional use
42 *shall* be approved if reasonable conditions are proposed or can be imposed to mitigate the
43 reasonably anticipated detrimental effects of the proposed use in accordance with applicable
44 standards.

1 Mr. Johnson referenced another section of the Conditional Use Ordinance identified as
2 19.84.020B, Standard for Approval. It specifies that a conditional use *shall* be approved if
3 reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated
4 detrimental effects of the proposed use. The only time conditional uses can be denied is if there
5 are no reasonable conditions that can offset the detrimental impacts. Mr. Johnson provided an
6 analysis of 19.84.080 and stated that there are two distinct provisions in that section. He explained
7 that when the Commission is approving with conditions or denying, those conditions or denial
8 shall be based on written findings of fact.

9
10 Officer Guymon reported that he read all of the materials submitted by both sides as well as by the
11 school district. He found there to be no dispute that approval of the Conditional Use Permit was
12 an approval with conditions. Mr. Johnson explained that when the Commission makes a decision
13 to approve without conditions, they shall not approve a CUP unless evidence is presented. It does
14 not specify how it must be presented. When reading from LUDMA in State Code and the 16
15 standards, it seemed that the intent when compared to the intent of LUDMA, was to ensure that
16 the conditions imposed are not overly strict or unreasonable. In conjunction with State Code,
17 imposing conditions or denial must be based on reasonable findings which were set forth in the 16
18 findings.

19
20 Mr. Johnson commented on the following conditions imposed on the approval:

- 21
22 1. The applicant shall comply with all regulations found in Chapter 19-82-100. Mr. Johnson
23 explained that it is built into the ordinance but reiterated.
24
25 2. The electronic display shall be turned off no later than 9:00 p.m. each day. Mr. Johnson
26 stated that that was discussed with the applicant and 9:00 p.m. was arrived at by the
27 applicant. The Commission agreed that that was reasonable.
28

29 There was one written finding of fact, which was referenced by motion as follows:

- 30
31 1. The proposed public facility's electronic display sign shall comply with all applicable
32 provisions of Chapter 19.82 of the zoning ordinance.
33

34 Mr. Johnson reported that in staff's response to the Appeal Brief, they were of the opinion that the
35 above finding of fact covers the applicable written standards. The ordinance does not specify that
36 a separate finding needs to be included for each of the 16 standards. It simply states that written
37 findings of fact with regard to each of the standards set forth. Staff felt that the one finding applies
38 to each of the standards. A detailed table was included in the staff response that described which
39 section of 19.82 addresses each of the applicable standards.
40

41 Mr. Johnson indicated that staff feels that the written finding of fact was part of the Commission's
42 motion and adequately addresses relevant standards. They understand that the appellant does not
43 agree. Staff's opinion was that approval of the Conditional Use Permit was in compliance with
44 State Code and 10-9A-507. They are entitled to grant the conditional use as long as the negative
45 impacts can be mitigated, which was done. Written findings are required to impose the conditions
46 and evidence is required for approval without conditions. If a decision is made to uphold the

1 appeal and the conclusion is reached that findings of fact are not adequate to substantiate the
2 conditions imposed, that conclusion should only result from the notification of the conditions
3 imposed and not in denial or reconsideration of the conditional use permit itself. There was
4 evidence in the record to justify the 16 standards of the Code that are applicable and were met.
5 Staff felt that even if written findings are not clear, all that should result in is the nullification of
6 the two conditions imposed. Approval of the conditional use, however, should still be allowed to
7 stand.

8
9 The appellant, James Adinaro, gave his address as 1786 East 7200 South, immediately west of the
10 proposed marquis and Ridgecrest Elementary. He did not want to wake up to a billboard flashing
11 through his bedroom window. Mr. Adinaro's opinion was that staff did not do their duty as
12 required under the Code. He gave a slide presentation and explained that Part D pertains to how
13 long a message on a sign is visible. The proposed billboard is six feet tall, is behind a decorative
14 fence, and 30 feet back from the road.

15
16 Mr. Johnson indicated that the billboard is exactly 7'8" tall. Officer Guymon reported that the
17 school district submitted materials, referred to Mr. Adinaro's arguments, and gave a rebuttal. It
18 was reported that the fence will be 4'1". With vehicles traveling 25 mph, in eight seconds they
19 will travel 294 feet. Mr. Adinaro stated that he measured that distance from the sign and it is not
20 visible. He commented that a motorist driving down the road at 25 mph will be able to see the
21 sign for eight seconds. Visibility issues were discussed, and renderings presented. Mr. Adinaro
22 explained that there is a limited area from where the sign can be seen, and it is not nearly eight
23 seconds.

24
25 Mr. Adinaro commented that the billboard shall comply with the lumens requirements that are in
26 direct correlation with natural ambient light conditions. When the parking lot was rebuilt a few
27 years earlier, a number of very bright LED lights were installed. He explained that the concept of
28 natural ambient lighting does not exist at the school and was not addressed by the Planning
29 Commission.

30
31 Mr. Adinaro reported that the Transportation Resource Board, a government-funded agency
32 studied the issue and found that the presence of digital billboards increases accident rates. Another
33 condition that was not addressed was that it comply with the spirit of the title. It will not comply
34 with the lumens requirements because there is no natural ambient light in that location. It was his
35 opinion that it does not comply with the spirit of the title.

36
37 Apart from the 9:00 p.m. shutoff requirement, there were no other conditions imposed to abate
38 nuisances caused by placing the billboard in a residential setting. There are other billboards in the
39 area, but Mr. Adinaro was not aware of any that are next to a residence. A study was conducted
40 showing that billboards negatively affect property values. The school receives property taxes and
41 does not pay them. So, in this case the only impact was to reduce property values.

42
43 Buffering issues were discussed. Mr. Adinaro explained that beyond the 9:00 p.m. shutoff, no
44 buffering is contemplated to protect the adjacent land uses. Officer Guymon was asked what kind
45 of buffering he thought would mitigate the light and visual impacts. Mr. Adinaro suggested it be
46 placed so that it cannot be seen from his windows. For example, it could be located along the side

1 of the driveway. To him, that would serve as a form of buffering. With regard to landscaping, he
2 stated that it would take time before any landscaping will be of any benefit in buffering the sign.
3 Moving the sign closer to the street was also identified as a possible mitigation. A photo was taken
4 of Mr. Adinaro's view of the sign from his bedroom.

5
6 Julie Winfree identified herself as the Principal of Ridgecrest Elementary School and gave her
7 address as 1800 East 7200 South. She reported that she had spoken with the sign company and
8 they consider it to be a message center rather than a billboard. They do not intend to have graphics
9 or large displays on the sign. Messages will be short with large text and each message will be
10 eight seconds or longer. Ms. Winfree reported that the sign must be a total of 64 square feet in
11 size. The wrought iron fence referred to is already in place. It is not solid and is 4'1" in height.
12 The electronic display will be five feet tall and above the fence so as to be easily seen.

13
14 Rick Conger identified himself as the Director of Facility Services for the Canyons School District
15 and gave his address as 9150 South 500 West. He reported that they have begun installing wrought
16 iron fencing in front of many schools in an effort to regulate traffic. From a distance they appear
17 to be solid. They are regulated in terms of how far apart the slats can be as well. It was noted that
18 the proposed location has changed several times. They cannot move it any closer to the building
19 and there is not enough room in the park strip for it.

20
21 Ms. Winfree reported that the building is set very far back, and they have a current sign that is too
22 small and not visible from the road. They would like a sign that is useful to the community and
23 their students. They looked at the possibility of locating the sign on the building, but it was
24 determined to be a hazard because it is set back so far from the road. Staging will take place in
25 the drop off area. Having the sign in the proposed location will give parents an opportunity to read
26 it. The sign will be taller than an average car and there will be no parking directly in front of it.

27
28 Ms. Winfree asked their Legal Department to review the findings and they felt they were irrelevant
29 in that they are proposing a message center and not a billboard. Some of the articles submitted by
30 the appellant are of huge billboards next to businesses. It was reiterated that there will be no
31 advertising or graphics on the sign. The study also addresses decreasing property values.
32 Ms. Winfree was aware of no studies that specifically focus on electronic message centers at
33 schools decreasing property values. She visited homes near the billboards and none of the residents
34 other than the appellant were unhappy with the sign. Most were supportive.

35
36 Mr. Conger stated that if additional landscaping is required, they will work with the property
37 owner. Ms. Winfree pointed out that the school was built 15 years ago, and Mr. Adinaro chose to
38 purchase a home next to it. She stated that communication has changed over the past 15 years.
39 When the school was built, there were less than 300 students and they now have 640. She reported
40 that 35% of the families with students who attend the school receive free or reduced lunch and
41 many do not have access to computers. Ms. Winfree also needs to communicate to future students
42 such as potential kindergartners. She commented that electronic signs are not out of the ordinary
43 and are reasonable. The goal was to get the word out to the community with respect to what is
44 taking place at the school.

1 Officer Guymon commented that in reviewing the ordinances, his job is to make sure that the
2 correct process is followed, that the decision is reviewed under the correct standard, and that the
3 Planning Commission's actions are supported by information and evidence in the record. He
4 explained that the Appeals Hearing Officer has certain specific authority set forth in City Code.
5 The standard requires that the Appeals Hearing Officer review the record of the Planning
6 Commission decision to determine whether the decision is legal and supported by substantial
7 evidence in the record and, therefore, not so unreasonable as to be arbitrary and capricious. In
8 reviewing the record, Officer Guymon looked at all of the materials submitted by the City, the
9 applicant, and the Code. What concerned him most was the provision dealing with Conditional
10 Use Permits. It specifies that the Planning Commission shall only approve with conditions or deny
11 a conditional use based on the written findings with regard to each of the 16 standards set forth.
12 He acknowledged that some of the findings are not applicable. Officer Guymon questioned where
13 in the record he could find written findings of fact from the Planning Commission that address
14 each of the required standards.

15
16 Mr. Johnson commented that staff felt that the finding included by motion and provided in the staff
17 report covers all of the provisions of 19.82.100, which is detailed in the table. They believe that
18 the regulations built into the ordinance adequately satisfy the conditions as described. Officer
19 Guymon commented that the City's response was very well done; however, it did not show that
20 the Planning Commission went through the same exercise. The record showed two determinations
21 by the Planning Commission. One was that the applicant shall comply with all public facility
22 electronic display signs with reference to 19.82.100, which deals with coming back within 10 days
23 of installation to make sure that all of the requirements are satisfied. If they had referenced 19.84
24 and included language addressing the 15 standards, he would look at the request differently.

25
26 Officer Guymon referred to the fact that there is a State standard that requires Conditional Use
27 Permits to be approved as long as reasonable conditions are imposed to mitigate the potential
28 negative impacts. He found nothing to suggest that the State standard eclipses or eliminates the
29 City Code requirement for the Planning Commission to make written findings of fact regarding
30 the 15 standards in the City Code. The appellant had done a good job of recognizing that that step
31 was skipped. Officer Guymon indicated that the Planning Commission did not do what was
32 required by City ordinance. He referenced a 1999 Utah Supreme Court case that states that in
33 construing land use decisions, a city is required to comply with its own mandatory ordinances. He
34 had seen nothing exempting the City from that standard.

35
36 ***Officer Guymon's determination was that the Planning Commission did not adequately address***
37 ***the 15 standards that must be considered by written findings. City Code specifies that the***
38 ***Planning Commission shall only approve with conditions based upon written findings of fact***
39 ***with regard to each of the standards set forth. He was not persuaded that the one finding***
40 ***satisfies the mandatory nature of the City ordinance. For that reason, Officer Guymon***
41 ***REMANDED the matter back to the Planning Commission.***

42
43 Officer Guymon commented that the Planning Commission should understand that a step was
44 skipped and that they need to go through the mandated process. He would not elevate process
45 over substance but stressed the importance of the process. He remarked that the appellant did a
46 very good job of looking at the standards and identifying what was not considered to determine if

1 there are additional conditions that could be imposed that would reasonably mitigate the
2 foreseeable detrimental impacts of the sign. He wanted to give the Planning Commission the
3 opportunity to follow the City ordinance. He stressed the importance of setting the right precedent.

4
5 Mr. Conger asked what their options will be if the determination remains unchanged. Ultimately,
6 if the sign is not feasible in the proposed location, he asked if the City will help determine a suitable
7 location. Officer Guymon stated that if the Planning Commission proposes new considerations
8 and imposes reasonable conditions to offset the concerns, that might be sufficient to satisfy the
9 appellant. It might also be beneficial to speak with the appellant and determine if there is a
10 different alignment that would resolve their concerns. He explained that once the Planning
11 Commission has gone through the process mandated by the City ordinance, if someone is not
12 pleased with the decision, they will still have the right to challenge it. He suggested that the
13 Planning Commission take every point raised by the appellant into account.

14
15 Officer Guymon commented that in reviewing the ordinances, specific to the public facility
16 electronic display sign, one condition was missed. Section 19.82.100(M)1 indicates that one of
17 the conditions of approval of a sign like the one proposed should include the 10-day certification
18 required by that section. Going forward it seemed that one of the conditions should be to require
19 compliance with the 10-day certification.

20
21 *Officer Guymon indicated that he would issue a written decision consistent with his decision*
22 *announced at the hearing.*

23 24 **5.0 ACTION ITEMS**

25 26 **5.1 Approval of April 11, 2018 Minutes.**

27
28 The minutes would be considered at the next meeting.

29 30 **6.0 ADJOURNMENT**

31
32 The Board of Adjustment Meeting adjourned at approximately 6:05 p.m.

1 *I hereby certify that the foregoing represents a true, accurate, and complete record of the*
2 *Cottonwood Heights City Appeals Hearing Officer Meeting held Wednesday, April 11, 2018.*
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4
5

6 
7
8

9 Teri Forbes
10 T Forbes Group
11 Minutes Secretary
12
13

14 Minutes approved: April 24, 2018